Supreme Court, U. S.
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77-248

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

DELORES GLOVER,
Petitioner,

v.

THE HERALD COMPANY d/b/ GLOBE-DEMOCRAT PUBLISHING COMPANY,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

	Page
Opinions Below	1
A. Trial Court	1
B. Missouri Court of Appeals St. Louis District Division Four	2
C. Supreme Court of Missouri	2
Question Presented	2
Statement of the Case	2
Argument	4
Conclusion	5

Cases Cited

Beckley Newspapers Corp. v. Hanks, 389 U.S. 81 (1967)	4, 5
Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967)	4
Garrison v. Louisiana, 379 U.S. 64 (1964)	4, 5
Gertz v. Robert Welch, Inc., 418 U.S. 323	5
Greenbelt Coop. Pub. Asso. v. Bresler, 398 U.S. 6 (1970)	5
Henry v. Collins, 380 U.S. 356 (1965)	4
Linn v. United Plant Guard Workers, 383 U.S. 53 (1966)	4
Monitor Patriot Co. v. Roy, 401 U.S. 265 (1971)	5
New York Times Co. v. Sullivan, 376 U.S. 254 (1963)	4
Ocala Star-Banner Co. v. Damron, 401 U.S. 295 (1971)	5
Pickering v. Board of Education, 391 U.S. 563 (1968)	4
Rosenblatt v. Baer, 383 U.S. 75 (1966)	4
St. Amant v. Thompson, 390 U.S. 727 (1968)	4, 5
Time v. Hill, 385 U.S. 374 (1967)	4
Time v. Pape. 401 U.S. 279 (1971)	5

B. **Missouri Court of Appeals, St. Louis District**

A divided Court (2-1) affirmed the decision of the Trial Court. A separate dissent was filed by the Chief Judge. The majority opinion and dissenting opinion are set forth *in toto* at Appendix 2 (pp. A-8-A-22) of Petitioner's Brief. Upon motion of Respondent, the Missouri Court of Appeals transferred the case to the Missouri Supreme Court.

C. **Supreme Court of Missouri**

In a unanimous opinion written by the Chief Justice, the Supreme Court of Missouri, sitting *en banc*, reversed the decision of the Trial Court based on this Court's decision in *New York Times* v. *Sullivan*, 376 U.S. 254, and its progeny.

QUESTION PRESENTED

Should certiorari be granted in a libel action based upon the publication of an article concerning a public official involved in a newsworthy matter of public interest where the State Supreme Court correctly applied the constitutional standards in accordance with the controlling cases of this Court and where there is no evidence of known falsity or reckless disregard of the truth?

STATEMENT OF THE CASE

There were no substantial differences below as to the facts underlying plaintiff's claim.

Delores Glover was and is a duly elected alderwoman of the City of St. Louis, representing the Third Ward. (P3). On Friday, July 6, 1973, there was a meeting of the Board of Aldermen, at which she was in attendance during a debate on

a bill which proposed to regulate the equipment required for abortion clinics operating in St. Louis. (P4). Another alderwoman, Mrs. Lerel Stewart, spoke on this issue and made the statement that she knew that the particular equipment the bill proposed to require was not necessary because she had personal knowledge, having had two abortions. (P4).

Globe-Democrat Reporter Marsha Canfield telephoned in the news story about the passage of the bill and the debate on it. She gave the "re-write man", Andy Wilson, the information about what happened, what was involved in the bill and summarizing the debate, who voted for it and against it. (P4).

Andrew Wilson testified that he was "working on a deadline", and because of "a personal mistake", Alderwoman Glover's name was used instead of Alderwoman Stewart. (P4). He stated, "I had Mrs. Glover's name a couple of lines above Mrs. Stewart's name, and in reading over the notes, I didn't notice Mrs. Stewart's name and saw Mrs. Glover's name, and I attributed the wrong remark to the wrong person." (P4).

On Monday, July 9, the next publication day, the Globe-Democrat published a retraction. (Exh. 2, T. 37).

In addition to Marsha Canfield and Andrew Wilson, City Editor Ray J. Noonan testified that he read the story, and read the quotes, and had no reason to question it—he had no way of knowing anyone else had made those quotes. (T. 38).

ARGUMENT

This Court has firmly established that where there is a publication concerning a public official involved in a matter of public interest, Petitioner must prove malice as defined.

Petitioner has not shown any special or important reason for this Court to grant certiorari. The decision below is not in conflict with the decisions of this Court or of other State Supreme Courts in this area. There has been no departure from the accepted and usual course of judicial proceedings. The matter in issue is not novel to this Court and the decision below is harmonious with the applicable decisions of this Court.

This Court has firmly established that a public official involved in a First Amendment action must prove by clear and convincing evidence that the article complained of, or statement made, was published with knowledge that it was false or with reckless disregard of whether it was false or not. This requirement of "clear and convincing proof" has been applied to a wide range of subjects within the public interest doctrine.[1]

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[1] *New York Times Co.* v. *Sullivan*, 376 U.S. 254 (1963); *Garrison* v. *Louisiana*, 379 U.S. 64 (1964)—comment of a local District Attorney concerning local judiciary; *Henry* v. *Collins*, 380 U.S. 356 (1965)—comments by defendant that his arrest was a result of a "diabolical plot" by County Attorney and City Police Chief; *Linn* v. *United Plant Guard Workers*, 383 U.S. 53 (1966)—charges by union of wrongdoing by official of Pinkerton's National Detective Agency during a union-organizing campaign; *Rosenblatt* v. *Baer*, 383 U.S. 75 (1966)—comments that a supervisor of a New Hampshire ski resort had improperly performed his duties; *Time* v. *Hill*, 385 U.S. 374 (1967)—a human interest story in connection with the opening on Broadway of a new play adapted from a book based on a crime involving plaintiffs, as victims, several years earlier; *Curtis Publishing Co.* v. *Butts*, 388 U.S. 130 (1967)—a claim that the football coach of the University of Georgia revealed certain of his team's plays to an opponent prior to their game; *Beckley Newspapers Corp.* v. *Hanks*, 389 U.S. 81 (1967)—charges made during an election campaign; *St. Amant* v. *Thompson*, 390 U.S. 727 (1968)—charges made by a candidate for public office; *Pickering* v. *Board of Education*, 391 U.S. 563 (1968)—improper dismissal of a teacher for writing a letter to the editor of a newspaper criticizing the Board of Education; *Greenbelt Coop. Pub. Asso.* v. *Bresler*, 398 U.S. 6 (1970)—use of the term "blackmail" in connection with the presentation of a local real estate developer at a City Council meeting; *Patriot Co.* v. *Roy*, 401 U.S. 265 (1971)—referring to a candidate for the U.S. Senate as "a former small-time bootlegger" with the Court noting no distinction between the evidence concerning the private life and public life of such candidate; *Time* v. *Pape*, 401 U.S. 279 (1971)—insufficient evidence of falsification to create a jury issue or sustain a jury finding of actual malice in a matter involving a Chicago policeman; *Ocala Star-Banner Co.* v. *Damron*, 401 U.S. 295 (1971)—erroneous identification of a candidate for County Tax Assessor as one who had been charged in Federal Court with perjury in a civil rights suit.

The Missouri Supreme Court correctly followed the dictates of this Court in *New York Times Co.* v. *Sullivan, supra*, and aptly noted "of particular interest", the decision of this Court in *Ocala Star-Banner Co.* v. *Damron, supra*. Moreover, consistent with this Court's decision in *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, the Missouri Supreme Court recognized and correctly applied the actual malice standard (*Beckley Newspapers Corp.* v. *Hanks*, 389 U.S. 81, *Monitor Patriot Co.* v. *Roy*, 401 U.S. 265, *St. Amant* v. *Thompson*, 390 U.S. 727).

Petitioner fails to show any constitutional basis for granting her petition for certiorari. The decisions of this Court were correctly followed and applied by the Missouri Supreme Court.

CONCLUSION

For the foregoing reasons, it is respectfully urged that Plaintiff's Petition for Writ of Certiorari be denied.

Respectfully submitted,

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